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Attorneys for Plaintiff
FRONTIER RECOVERY, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

FRONTIER RECOVERY, LLC,

No.

Plaintiff,

v.

**COMPLAINT (Resource
Conservation and Recovery Act;
Statutory Cost Recovery;
Statutory Contribution; Common
Law Indemnity; and Nuisance)**

LANE COUNTY, an Oregon political
subdivision,

Defendant.

Plaintiff Frontier Recovery, LLC ("Plaintiff") alleges as follows:

PARTIES

1.

At all material times, Plaintiff was and is an Oregon limited liability company in good standing.

2.

At all material times, Defendant Lane County ("Defendant") was and is an Oregon county, organized pursuant to ORS Chapter 203, and Lane County Home Rule Charter.

JURISDICTION

3.

Federal jurisdiction is proper pursuant to 28 U.S.C. § 1331.

4.

This matter involves a Federal statute, the Resource Conservation and Recovery Act, 42 U.S.C. § 6972.

VENUE

5.

Venue in the United States District Court for the District of Oregon is proper under 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

6.

Plaintiff is the owner of certain real property located in Lane County, Oregon, known as "Bethel-Danebo Landfill Site" ("Site"). Plaintiff is successor in interest to Lane Plywood, Inc. ("Lane Plywood") and is assignee of all claims asserted herein.

7.

Defendant owned the Site from 1974 - 1978 and operated it as a county solid waste landfill. Lane County transferred the Site to Plaintiff's predecessor, Lane Plywood, in 1978. Neither Lane Plywood nor Plaintiff ever operated the Site as a landfill.

8.

Lane Plywood relied on information from the Oregon Department of Environmental Quality ("DEQ") and Lane County that the Site had been properly closed

in purchasing the property and in developing its plans for the future uses of the property.

9.

Plaintiff intends to develop the Site for light industrial and commercial uses. During the course of the permitting process with the City of Eugene, it was discovered that the Site has methane gas concentrations and other regulated contaminants ("contamination") resulting from its prior use as a landfill, and that the contamination would and will require mitigation.

10.

Since discovery of the contamination, Plaintiff has incurred investigation, remediation and mitigation costs in the amount of \$1,900,000, which were incurred in response to requirements imposed by DEQ.

11.

During the course of Plaintiff's investigation, it has been discovered that the Site was not properly closed by Defendant prior to its transfer to Lane Plywood. Defendant conveyed the Site as a closed landfill to Lane Plywood without having complied with DEQ's landfill closure requirements or having received the necessary written closure confirmation from DEQ.

12.

Plaintiff has requested that Defendant assume the continuing investigation and remediation of the Site and reimburse it for the costs alleged in paragraph 10, *supra*. Defendant has refused and/or failed to do so.

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13.

Plaintiff continues, at its own expense, to investigate, remediate and mitigate the Site, even though neither Plaintiff nor its predecessor, Lane Plywood, at any time operated the Site as a landfill or contributed to, or exacerbated the contamination of the Site.

FIRST CAUSE OF ACTION

(Resource Conservation and Recovery Act, 42 U.S.C. § 6972)

14.

Plaintiff realleges and incorporates by reference paragraphs 1 through 13 above.

15.

Defendant failed and continues to fail to close the Site in compliance with the requirements of the solid waste disposal facility permit and applicable regulations, including current regulations regarding management of methane at solid waste landfills.

16.

Plaintiff gave Defendant, the Oregon DEQ, and the Environmental Protection Agency notice of the violation and Plaintiff's intent to sue more than sixty days prior to filing suit, in the manner required by section 7002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and in the manner required by 40 C.F.R. Part 254.

17.

To date, Defendant refuses to comply with current solid waste landfill closure requirements at the Site.

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18.

Pursuant to 42 U.S.C. § 6972(e), Plaintiff is entitled to an award of attorneys fees, costs and expert witness fees.

SECOND CAUSE OF ACTION

(Statutory Cost Recovery, ORS 465.255)

19.

Plaintiff realleges and incorporates by reference paragraphs 1 through 18 above.

20.

Defendant is an “owner or operator at or during the time of the acts or omissions that resulted in the release,” as defined in ORS 465.255(1)(a).

21.

The Site is a “facility,” as defined in ORS 465.200(13), and the methane gas, and other contamination at the Site is a “release,” as defined in ORS 465.200(22).

22.

Plaintiff has incurred remedial action costs, as defined in ORS 465.200(24), in responding to the demands of DEQ in investigating, mitigating and remediating the Site.

23.

Plaintiff is entitled to statutory cost recovery from Defendant pursuant to ORS 465.255 for Plaintiff’s remedial action costs in the amount of \$1,900,000, or such other amount as is proven at trial, and an order requiring Defendant to pay any and all future costs to satisfy the requirements of DEQ.

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THIRD CAUSE OF ACTION

(Statutory Contribution, ORS 465.257)

24.

Plaintiff realleges and incorporates by reference paragraphs 1 through 23 above.

25.

Plaintiff and Defendant are “persons,” as defined in ORS 465.200(21).

26.

The Site is a “facility,” as defined in ORS 465.200(13), and the methane gas, and other contamination at the Site is a “release,” as defined in ORS 465.200(22).

27.

Defendant is the “owner or operator,” as defined in ORS 465.200(20), of the Site.

28.

Plaintiff has incurred remedial action costs, as defined in ORS 465.200(24), in responding to the demands of DEQ in investigating, mitigating and remediating the Site.

29.

Plaintiff is entitled to contribution from Defendant pursuant to ORS 465.257 for Plaintiff’s remedial action costs in the amount of \$1,900,000, or such other amount as is proven at trial, and an order requiring the Defendant to pay any and all future costs to satisfy the requirements of DEQ.

FOURTH CAUSE OF ACTION

(Common Law Indemnity)

30.

Plaintiff realleges and incorporates by reference paragraphs 1 through 29 above.

31.

To date, Plaintiff has discharged Defendant's legal obligation to the DEQ to properly investigate and remediate the Site.

32.

The remediation obligation discharged by Plaintiff was owed by Defendant.

33.

Defendant was solely responsible for causing the contamination at the Site and for failing to properly close the Site as required by DEQ. Plaintiff's predecessor innocently failed to discover the contamination at the time Plaintiff's predecessor acquired the Site, and Plaintiff has done nothing to exacerbate the contamination at the Site. As between Defendant and Plaintiff, the obligation to DEQ ought to be discharged by Defendant. Plaintiff's liability, if any, is merely passive, while Defendant's liability is active and primary.

34.

Plaintiff is entitled to be indemnified by Defendant for the costs Plaintiff has incurred to date in investigating and remediating the Site in the amount of \$1,900,000, or such other amount as is proven at trial.

FIFTH CAUSE OF ACTION

(Nuisance)

35.

Plaintiff realleges and incorporates by reference paragraphs 1 through 34 above.

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36.

Defendant's prior use of the Site as a county landfill facility, and Defendant's failure to properly close the Site, negligently, recklessly or intentionally caused a substantial interference with Plaintiff's use and enjoyment of the Site and constitutes maintenance of an ongoing nuisance detrimentally affecting the Site and its reasonable value and Plaintiff's ability to freely develop the Site to its highest and best use.

37.

As a direct and proximate result of Defendant's actions, Plaintiff has suffered damages in the amount of \$7,000,000, or such other amount as is proven at trial, representing the diminution of the fair market value of the Site, and representing the diminution of the fair value of the Site and representing Plaintiff's damages sustained by virtue of its inability to utilize said Site to its highest and best use.

PRAYER

WHEREFORE, Plaintiff prays for judgment on its First, Second, Third, Fourth and Fifth Causes of Action:

(a) On Plaintiff's First Cause of Action, for an order requiring Defendant to take all necessary actions to remediate and close the Site in accordance with current standards;

(b) On Plaintiff's First Cause of Action, for an award of attorneys fees, costs and expert witness fees;

(c) On Plaintiff's Second Cause of Action, for damages in the amount of \$1,900,000, or such other amount as is proved at trial;

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- (d) On Plaintiff's Third Cause of Action, for damages in the amount of \$1,900,000, or such other amount as is proved at trial;
- (e) On Plaintiff's Fourth Cause of Action, for damages in the amount of \$1,900,000, or such other amounts as is proved at trial;
- (f) On Plaintiff's Fifth Cause of Action, for damages in the amount of \$7,000,000, and for such other amount as proved at trial;
- (g) For an order requiring Defendant to pay any and all future costs to satisfy DEQ;
- (h) For Plaintiff's costs and disbursements herein; and
- (i) For such other relief as the Court deems just and proper.

DATED this 14th day of January, 2009.

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